IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 238 OF 1994

Prabhakar Vishwanath Buva. ... Appellant.
Versus.
Babai Bali Thorat & others. ... Respondents.

Shri Umesh Mankapure i/by Ranjit V.More for the Appellant.

CORAM : ABHAY S. OKA, J.

DATED : 27th January, 2005.

P.C.:

1. Heard learned Counsel for the Appellant. The Second Appeal is by unsuccessful Plaintiff. There are concurrent findings of fact that the Appellant/Plaintiff has failed to establish existence of a road passing through the land of the Respondents Nos.1 to 5. The said finding is based on the appreciation of oral and documentary evidence on record.

2. As a matter of fact, the trial Court recorded a finding that the Appellant has filed a frivolous suit and therefore, compensatory costs of Rs.500/- is awarded. The Appellate Court has also observed that with a view to harass the Respondent Nos.1 to 5 who are women litigants, the suit was deliberately filed in the Court of the Civil Judge, Senior Division, Satara, by impleading the State Government as party. The concurrent findings of fact recording the failure of the

Appellant to prove existence of the road is based on the legal evidence and no interference is required.

3. Another contention raised in this Appeal is that "D" file on the record of the trial Court was destroyed even before the Appeal was heard on merits. A perusal of the provisions of the Civil Manual shows that all the documents which are admitted in evidence as well as depositions (notes of evidence) form part of "C" file and the "D" File contains documents which are not material. No case is made out that any prejudice has been caused to either party due to loss of any particular documents which are kept in the "D" file.

4. No substantial question of law arises in the Second Appeal. The Second Appeal is accordingly dismissed with no order as to costs.

Judge.